

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SYLVESTER JAMES MAHONE,

Plaintiff,

v.

PIERCE COUNTY, PAUL PASTOR,  
JOHN DOE PIERCE COUNTY JAIL  
DEPUTY, JOHN DOE PIERCE  
COUNTY JAIL DEPUTY, JOHN DOE  
PIERCE COUNTY JAIL DEPUTY,

Defendants.

CASE NO. C14-5665 BHS-KLS

ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION TO AMEND

Plaintiff Sylvester James Mahone moves the Court for leave to file a second amended complaint. Dkt. 33. Defendants oppose the motion on the grounds that granting leave to amend would be futile. Dkt. 35. The Court finds that the motion to amend should be granted in part and denied in part and Plaintiff shall be granted leave to file an amended complaint as discussed further herein.

**BACKGROUND**

Mr. Mahone filed this 42 U.S.C. § 1983 action on August 21, 2014. Dkt. 1. He sued Pierce County, Paul Pastor, and three John Doe Deputies alleging that he was assaulted by the John Doe Deputies during a court escort in 2013. He alleges that his constitutional rights were

1 violated by John Doe Deputies' excessive use of force and the County's failure to adequately  
 2 train and supervise its employees. Dkt. 1. After the complaint was served, Mr. Mahone filed an  
 3 amended complaint naming the same parties and alleging the same claims. Dkt. 9. Defendants  
 4 filed their answer to the amended complaint. Dkt. 16.

5 Mr. Mahone filed his present motion to amend on December 18, 2014. Dkt. 33. In his  
 6 proposed second amended complaint, Mr. Mahone adds two new defendants, conspiracy claims,  
 7 claims related to the handling of his grievance, and he identifies the John Doe Defendants  
 8 previously named in his amended complaint. Dkt. 33-1.

### 9 DISCUSSION

10 Federal Rule of Civil Procedure 15(a)(2) directs a court to grant leave to amend if justice  
 11 so requires. "A district court should grant leave to amend ... unless it determines that the pleading  
 12 could not possibly be cured by the allegation of other facts." *Lacey v. Maricopa*, 693 F.3d 896,  
 13 926 (9th Cir.2012). In other words, "requests for leave to amend should be granted with extreme  
 14 liberality...." *Mirmehdi v. United States*, 689 F.3d 975, 985 (9th Cir.2012).

15 For a Rule 15(a) motion, the non-moving party bears the burden of persuading the court  
 16 that leave should not be granted. *Breakdown Services, Ltd. v. Now Casting, Inc.*, 550 F.Supp.2d  
 17 1123, 1132 (C.D.Cal.2007) (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186–87 (9th  
 18 Cir.1987). The Court considers the following five factors in its analysis when leave to amend is  
 19 requested: (1) bad faith, (2) undue delay, (3) prejudice to opposing party, (4) futility of  
 20 amendment, and (5) whether the complaint was previously amended. *United States v.*  
 21 *Corinthian Colleges*, 665 F.3d 984, 995 (9th Cir.2011). Ordinarily, there is a presumption that  
 22 leave to amend should be granted absent a strong showing of one of the five factors. *Eminence*  
 23 *Capitol, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.2003).

1 As noted above, Mr. Mahone's first amendment was filed prior to the time the  
2 Defendants filed their answer. There is no evidence that Plaintiff advances his proposed second  
3 amendment in bad faith, with undue delay, or that the proposed amendment will cause prejudice  
4 to the opposing party. According to the Court's pretrial scheduling order, the parties still have  
5 four months to complete discovery and six months to file dispositive motions. Dkt. 19.  
6 However, Defendants argue that amendment is futile. The Court has reviewed the existing  
7 amended complaint and proposed second amended complaint and finds that the motion to amend  
8 should be granted in part and denied in part as follows:

9 **A. Identification of John Doe Defendants**

10 The proposed second amended complaint identifies Terry Rembert, Jesse Boyle, Scott  
11 Kasten, and Ilsop Lee as the individual officers who allegedly used excessive force on February  
12 7, 2013. Dkt. 33-1, pp. 2-4. These parties were previously identified in Mr. Mahone's pleadings  
13 as "John Doe" defendants.

14 Defendants argue that amending the complaint to identify the officers previously  
15 identified as "john does" in Plaintiff's amended complaint is futile because they are entitled to  
16 qualified immunity. The question at this juncture in the litigation is whether Plaintiff has stated a  
17 viable claim for relief. Qualified immunity is not a broad shield that automatically protects all  
18 state defendants because all allegedly shared the same reasonable belief. Qualified immunity  
19 must be decided with regard to each individual defendant based on his or her duty to act and his  
20 or her conduct. *See Cunningham v. Gates*, 229 F.3d 1271, 1289 (9th Cir.2000) (requiring district  
21 court to "analyze the acts of each individual defendant in its qualified immunity analysis").  
22 Before the Court can decide whether state defendants are entitled to qualified immunity because  
23 they reasonably believed they acted in accordance with their legal duty in light of clearly  
24 established law, it needs concrete facts on what each officer in fact did or did not do.

1 Therefore, Plaintiff's motion to amend his complaint to identify the "john doe" officers  
2 allegedly involved in using excessive force is **GRANTED**.

3 **B. Allegations of Conspiracy**

4 In the proposed second amended complaint, Mr. Mahone alleges that Officers Rembert,  
5 Boyle, Kasten, and Lee "colluded to write false incident reports of this beating" and Officers  
6 George Wasson and Tony Genga "colluded in their decision" to not interview eye witnesses to  
7 the assault so as to "cover up" the assault. Dkt. 33-1, pp. 10-11.

8 Mr. Mahone fails to state a viable claim of conspiracy. To establish a cause of action  
9 under a § 1983 conspiracy claim, the plaintiff must prove "(1) the existence of an express or  
10 implied agreement among the defendant officers to deprive him of his constitutional rights, and  
11 (2) an actual deprivation of those rights resulting from that agreement." *Ting v. United States*,  
12 927 F.2d 1504, 1512 (9th Cir.1991). To show a conspiracy under § 1983 there must be an  
13 agreement or meeting of the minds to violate the plaintiff's constitutional rights. *Woodrum v.*  
14 *Woodward County*, 866 F.2d 1121, 1126 (9th Cir.1989).

15 Mr. Mahone has fallen far short of setting forth facts establishing a conspiracy. He  
16 merely states that the parties conspired. He pleads no facts surrounding or relating to the alleged  
17 conspiracy which would allow the Court to draw the reasonable inference that the defendants are  
18 liable for the misconduct alleged. To survive dismissal, a complaint must contain sufficient  
19 factual matter that states a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S.  
20 662, 129 S.Ct. 1937, 1950, 173 L.Ed.2d 868 (2009). Where a complaint pleads facts that are  
21 merely consistent with a defendant's liability, it stops short of the line between possibility and  
22 plausibility of entitlement to relief. *Id.*, 129 S.Ct. at 1950 (citations omitted).

23 However, Mr. Mahone shall be **GRANTED** leave to amend his complaint to include to  
24 the extent possible, facts supporting his claim that the parties conspired.

1 **C. Grievance Investigation**

2 In the proposed second amended complaint, Mr. Mahone names as defendants Scott  
3 Wasson and Tony Genga as the officers who investigated his grievance. Mr. Mahone alleges  
4 that these individuals failed to interview two inmate witnesses who had been identified as eye  
5 witnesses to the alleged assault. Dkt. 33-1, p. 6.

6 Defendants argue that this claim must be dismissed because Mr. Mahone has no  
7 constitutional right to have his grievance investigated in a particular manner. The Court agrees.  
8 Inmates have no constitutional right to particular prison grievance procedures. *Mann v. Adams*,  
9 855 F.2d 639 (9th Cir.1988), *cert. denied*, 488 U.S. 898 (1988); *Stewart v. Block*, 938 F.Supp.  
10 582 (C.D.Cal.1996); *Hoover v. Watson*, 886 F.Supp. 410 (D.Del.1995) (*aff'd*, 74 F.3d 1226).  
11 Furthermore, “a state grievance procedure does not confer any substantive constitutional right  
12 upon prison inmates.” *Hoover*, 886 F.Supp. at 418 (*quoting Brown v. Dodson*, 863 F.Supp. 284,  
13 285 (W.D.Va.1994)). Therefore, the investigating officers’ refusal to interview witnesses is not  
14 an independent constitutional violation.

15 Amending the complaint to add claims against Scott Wasson and Tony Genga based on  
16 their investigation of Mr. Mahone’s grievance is futile. Additionally, claims against Defendant  
17 Pierce County and/or Sheriff Pastor based on these same facts are similarly defective. *See, e.g.*,  
18 Dkt. 33-1, p. 14. Therefore, Mr. Mahone’s motion to amend to add claims and parties regarding  
19 the handling of his grievance is **DENIED**.

20 **D. Inadequate Training and Supervision**

21 In his proposed second amended complaint, Mr. Mahone alleges that Defendants Pierce  
22 County and its Sheriff Paul Pastor failed to provide adequate training, supervisory oversight, and  
23 control over the defendants regarding the use of excessive force. Defendants argue that the  
24 amendment should be denied because Mr. Mahone has failed to allege evidentiary and legal

1 elements to support a claim of municipal liability or official misconduct. However, Mr. Mahone  
2 previously alleged in both his original and amended complaints that the officers used excessive  
3 force during the court escort and that their use of excessive force was the result of a lack of  
4 training and supervision. *See e.g.*, Dkt. 9, p. 9. Therefore, the proposed amendment does not  
5 add new claims to the complaint.

6 Accordingly, it is **ORDERED**:

7 (1) Plaintiff's motion to amend (Dkt. 33) is **GRANTED IN PART**; Plaintiff is  
8 granted leave to file an amended complaint identifying the John Doe Defendants, restating his  
9 claims against the County and Sheriff Pastor for inadequate training and supervision, and  
10 alleging facts to support his conspiracy claims **on or before February 6, 2015**. The remainder  
11 of Plaintiff's motion to amend (Dkt. 33) as to claims relating to the investigation of his grievance  
12 is **DENIED**.

13 (2) The Clerk is directed to send a copy of this Order to Plaintiff and to counsel for  
14 Defendants.

15 DATED this 12th day of January, 2015.

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18 Karen L. Strombom  
United States Magistrate Judge  
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